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April 28, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 29, 2009

Case Number: TSO-0872

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be granted.

I. Background

The individual is an applicant for a DOE access authorization. In February 2009, as part of a background investigation, the Local Security Office (LSO) conducted a Personnel Security Interview (PSI) of the individual to address some possible mental health issues. After the PSI, the LSO requested the individual's medical records and recommended a psychiatric evaluation of the individual by a DOE consultant psychiatrist (DOE psychiatrist). The DOE psychiatrist concluded that the individual possesses Mood Disorder Not Otherwise Specified (Recurrent). The DOE psychiatrist further concluded that the individual's mental illness causes or may cause a significant defect in his judgment and reliability.

In November 2009, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) (hereinafter referred to as Criterion H).
2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual presented the testimony of five witnesses - three managers/co-workers, his wife and his treating psychiatrist. He also testified on his own behalf. The DOE and the individual submitted a number of written exhibits prior to and during the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting his access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a

2/ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h).

person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As stated above, the LSO cites one criterion as the basis for denying the individual's security clearance, Criterion H. To support Criterion H, the LSO relies on the DOE psychiatrist's report that the individual suffers from a Mood Disorder Not Otherwise Specified (Recurrent). DOE Exh. 6. The DOE psychiatrist further opined that the individual has a mental condition that has caused a significant defect in his judgment and reliability.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H. A mental condition such as Mood Disorder can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House.

IV. Findings of Fact

Since 1984, while in high school, the individual has received counseling for mental and emotional issues. DOE Exh. 3. Around 1987, after a break-up with a girlfriend, the individual became depressed, met with a psychologist and attended a few therapy sessions. According to the individual, his condition was characterized as an adjustment disorder. In 2004, while in graduate school, the individual began feeling depressed "because he was not getting the anticipated technical results from his thesis work." *Id.* He sought medical attention from an on-campus provider on three occasions and was prescribed an anti-depressant. In the summer of 2005, the individual spoke to his wife about suicidal feelings and she encouraged him to seek medical attention. The individual was admitted to a local clinic and was subsequently diagnosed with Bipolar Disorder. From August 2005 through March 2006, he attended therapy sessions and he took several prescribed medications as part of his treatment. At the time of his treatment, the individual was given a good prognosis. In November 2006, the individual met with a new treating psychiatrist who began to wean him off his medications. *See* Indiv. Exh B.

After conducting a background investigation of the individual, the LSO referred the individual to a DOE psychiatrist in May 2009 for a forensic evaluation. During his evaluation, the DOE psychiatrist opined that the individual suffers from a "Mood Disorder Not Otherwise Specified (recurrent); rule out Bipolar Disorder." DOE Exh. 6. The DOE psychiatrist further opined that "if the [the individual] has a relapse, history indicates that he can become dysfunctional." *Id.* At the time of the evaluation, the DOE psychiatrist opined that the presence of rehabilitation or reformation does not exist, stating further that it is important that the individual engage in outpatient follow-up with a psychiatrist. *Id.*

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). ^{3/} After due deliberation, I have determined that the individual's access authorization should be granted. I find that granting the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

The Diagnosis of Mood Disorder Not Otherwise Specified (Recurrent) - Criterion H

1. The Individual's Testimony

At the hearing, the individual acknowledged that he had emotional issues while in high school and participated in counseling. Transcript of Hearing (Tr.) at 124. However, he testified that he was not prescribed medication at the time. *Id.* He further testified that he sought counseling in college after a break-up with a girlfriend, and was subsequently diagnosed with an adjustment disorder. According to the individual, it took about ten years, from 1994 to 2005, for him to complete graduate school. *Id.* at 121. He stated that graduate school took such a long time because he had issues with equipment failures which compromised his data collections and kept him from completing his data analysis. *Id.* at 122. During this stressful time period, the individual testified that he became depressed and sought further counseling. He stated that he continued to take his prescribed medication even though there were side effects. *Id.* at 126.

The individual testified that after graduation, he began working for a company which required him to work in an isolated environment with little direction. *Id.* at 130. He acknowledged that he was not well-suited for this work environment and had problems producing a work product. *Id.* According to the individual, he continued to experience stress at this time and his doctor transitioned him to a different medication. *Id.* at 132. Nevertheless, the individual stated that he became increasingly frustrated at work and even more depressed, experiencing suicidal feelings. *Id.* He testified that, in March 2006, he decided to discuss these feelings with his wife and he subsequently made an appointment with his treating psychiatrist. *Id.* at 133. The individual stated that after informing his doctor of his suicidal thoughts, he was immediately admitted into an inpatient facility where a doctor prescribed additional medication, including an anti-anxiety medication and a mood

^{3/} Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

stabilizer. *Id.* at 134. He testified that after being released from the facility, he continued with group therapy sessions and weekly sessions with a psychotherapist. *Id.* at 135.

The individual stated that in October 2006 he moved, changed jobs and immediately met with a primary care physician who referred him to his current treating psychiatrist. *Id.* at 140. After reviewing his medications with his psychiatrist, the individual testified that he discussed tapering off all medication. *Id.* According to the individual, his goal was to demonstrate a high level of functioning without medication. *Id.* Under the supervision of his psychiatrist, the individual testified that he began tapering off all of his medication, completely tapering off all medication by March 2008. *Id.* at 143. Since tapering off his medication and working in a new job, the individual stated that his relationship with his family has been “outstanding” and that his new job has been “an unexpected good fit” for him. *Id.* at 144 and 146. Finally, the individual testified that he has never stopped any medication without consulting with his doctor and that he has been off all medication to treat his depression for almost two years. *Id.* at 158. He added that he has not had any symptoms or episodes of depression since he has stopped his medication and that he is now better equipped to recognize the warning signs of depression. *Id.* at 160-161. He testified that if he were to experience any symptoms in the future, he would not hesitate to seek medical treatment and to take prescribed medication. *Id.*

During the hearing, the individual also offered the testimony of five witnesses to corroborate his testimony: three managers/co-workers, his wife and his treating psychiatrist. Two managers testified that the individual is a knowledgeable, good employee who performs well at his job. *Id.* at 26 and 41. Neither one of them has ever observed any signs of depression in the individual. *Id.* at 30 and 41. Another manager, who has known the individual since 1995, testified that he has worked very closely with the individual. *Id.* at 52. He stated that while the individual was in graduate school, he noticed that he “drifted away,” but did not realize it was due to depression. *Id.* at 54. He also testified that the individual has performed “exceptionally well” on his job and that he never witnessed any signs of depression in the individual, other than normal frustrations. *Id.* at 60.

The individual’s wife, who has been married to the individual for fifteen years, testified that she first became aware of the individual’s mental health issues at the end of his graduate school work. *Id.* at 75-76. She noticed that he was working slowly and had trouble producing his research. *Id.* at 77. Shortly after completing graduate school and starting a new job, his wife recalled that the individual told her that his depression was not resolved and that he had suicidal thoughts. She further testified that once the individual was hospitalized, he took advantage of the treatment and group counseling. *Id.* at 79. According to the wife, the individual has had no signs of depression since taking his new job in 2006 and recalled when he stopped, under medical supervision, taking his medication. She testified that the individual has been thriving and is now very outgoing and active with his church. *Id.* at 116.

The individual’s treating psychiatrist testified that he first met with the individual in November 2006. *Id.* at 165. He testified that, at that time, he discussed the individual’s medications with him and his desire to taper off his medications. *Id.* The treating psychiatrist testified that the individual showed

no signs of depression or anxiety at that time, and that based on his interview, his recent history and two objective psychological questionnaires, the individual was in full remission from his depression on medication. He believed the individual had been in remission from depression for some time and that it was appropriate for him to begin to taper his medicines. *Id.* at 166. He testified that, in his opinion, he believed the individual was taking excessive doses of his medication. According to the treating psychiatrist, he slowly began to taper the individual off one of his medications, and met with him again in March 2008 to review his progress. *Id.* The treating psychiatrist noted that when he met with the individual in 2008, his progress was excellent, and determined that the individual was in full remission. *Id.* He further stated that the individual had been stable throughout the previous year and showed no symptoms of anxiety or depression. *Id.* at 167. The treating psychiatrist testified that after the individual's success with tapering off one medication, he prescribed a regimen for tapering off his other medication. *Id.* He recently administered another set of objective psychological assessment tools to the individual and found that they were asymptomatic and showed a normal mental status. *Id.* at 167. In terms of his current recommendation, the treating psychiatrist does not believe the individual has a mental disorder or requires medication. *Id.* at 168. He believes the individual has learned how to both better monitor himself and to manage the stresses in his life. *Id.*

2. The DOE Psychiatrist's Testimony and Report

The DOE psychiatrist stated in his Psychiatric Report that the individual suffers from a Mood Disorder Not Otherwise Specified (Recurrent). DOE Exh. 6. He further opined that the presence of rehabilitation or reformation and other behavioral changes do not exist. *Id.* He added that the individual's illness causes a significant defect in his judgment and reliability. After listening to the testimony of all of the witnesses in this case, the DOE psychiatrist testified that at the time he met with the individual, he was doing well, but that there was not a lot of information available to him. Tr. at 178. He now states that his current opinion of the individual is Major Depression, Recurrent in Full Remission, which he believes is perfectly consistent with the individual's treating psychiatrist's opinion. *Id.* He further testified that the individual has now demonstrated adequate evidence of rehabilitation and he has no concerns with the individual no longer taking medication. *Id.* at 180. The DOE psychiatrist stated that the individual's prognosis is excellent and that he is now equipped to recognize an onset of a depressive episode. *Id.* at 181.

3. Hearing Officer's Evaluation of the Evidence

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing*, Case No. TSO-0728 (2009). ^{4/} Regarding rehabilitation, both experts are in accord that the individual's depression is in full remission and that he has demonstrated adequate evidence of rehabilitation. In addition, the individual credibly testified that he now has the

^{4/} Decisions issued by OHA are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

tools to recognize depressive symptoms if they arise in the future, and that he is now more outgoing and stable. I am convinced that the individual's current lifestyle changes, which include active participation in his church, a better job fit and a continued close relationship with family and friends, will allow him to cope with future stressful events in his life. Based on the foregoing, I am again convinced that the individual's depression is in full remission and that he no longer possesses a mental illness that causes a significant defect in his judgment and reliability. Therefore, I find that the individual has provided adequate evidence to mitigate the security concerns under Criterion H.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion H. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the individual has brought forth convincing evidence to mitigate the security concerns associated with Criterion H. I therefore find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: April 28, 2010